

Comptroller of the Currency, Treasury

§ 7.5002

§ 7.5001 Electronic activities that are part of, or incidental to, the business of banking.

(a) *Purpose.* This section identifies the criteria that the OCC uses to determine whether an electronic activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24 (Seventh) or other statutory authority.

(b) *Restrictions and conditions on electronic activities.* The OCC may determine that activities are permissible under 12 U.S.C. 24 (Seventh) or other statutory authority only if they are subject to standards or conditions designed to provide that the activities function as intended and are conducted safely and soundly, in accordance with other applicable statutes, regulations, or supervisory policies.

(c) *Activities that are part of the business of banking.* (1) An activity is authorized for national banks as part of the business of banking if the activity is described in 12 U.S.C. 24 (Seventh) or other statutory authority. In determining whether an electronic activity is part of the business of banking, the OCC considers the following factors:

(i) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;

(ii) Whether the activity strengthens the bank by benefiting its customers or its business;

(iii) Whether the activity involves risks similar in nature to those already assumed by banks; and

(iv) Whether the activity is authorized for state-chartered banks.

(2) The weight accorded each factor set out in paragraph (c)(1) of this section depends on the facts and circumstances of each case.

(d) *Activities that are incidental to the business of banking.* (1) An electronic banking activity is authorized for a national bank as incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking. In determining whether an activity is convenient or useful to such activities, the OCC considers the following factors:

(i) Whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and

(ii) Whether the activity enables the bank to use capacity acquired for its banking operations or otherwise avoid economic loss or waste.

(2) The weight accorded each factor set out in paragraph (d)(1) of this section depends on the facts and circumstances of each case.

(3) In addition to the electronic activities specifically permitted in § 7.5004 (sale of excess electronic capacity and by-products) and § 7.5006 (incidental non-financial data processing), the OCC has determined that the following electronic activities are incidental to the business of banking, pursuant to this section. This list of activities is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(i) Web site development where incidental to other banking services;

(ii) Internet access and e-mail provided on a non-profit basis as a promotional activity;

(iii) Advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services; and

(iv) Sale of equipment that is convenient or useful to customer's use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Public Law 108-100 (12 U.S.C. 5001-5018) (the Check 21 Act).

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§ 7.5002 Furnishing of products and services by electronic means and facilities.

(a) *Use of electronic means and facilities.* A national bank may perform, provide, or deliver through electronic